IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11444 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOPALBHAI PUNJABHAI VANKER - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Respondent(s)

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Appearance :
MR CB DASTOOR for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

1. Heard Mr.C.B. Dastoor, learned counsel for the petitioner and Mr.H.S. Munshaw, learned counsel for the respondent.

2. Being aggrieved by the award dtd.25/8/1998 passed by the Labour Cour, Ahmedabad in Reference (LCA) No.2104 of 1986, the workman is before this Court under Article 227 of the Constitution of India with a submission that even for a small lapse, withholding of three increments is shockingly disproportionate.

3. Short facts necessary for disposal of the writ application are that the petitioner while working as conductor was paid 50 paise and was asked to issue a ticket. He was issued a ticket for 40 paise and instead of returning / refunding the balance amount of 10 paise, he wrote on the back of he ticket that the money can be collected at the bus terminus / depot. When the passenger asked for the cash return, allegations say that he misbehaved with the passenger and abused him. A chargesheet was issued and after holding an inquiry into the conduct of the workman, he was directed to be removed from the services. The Labour Court in a reference at the instance of the workman, however found that the termination was shockingly disproportionate, set aside the termination, directed reinstatement with penalty of withholding of three increments with cumulative effect and without back wages.

4. Mr.Dastoor, learned counsel for the petitioner submits that the punishment as awarded by the Labour Court is patently illegal and shockingly disproportionate.

5. Mr.Munshaw, learned counsel for the respondent, however, submitted that in absence of cross writ reference, the respondent man not be able to challenge the illegal findings recorded by the Labour Court, but looking to the facts and circumstances of the case, it would clearly appear that the modus operandi of the conductor was to create a situation where nobody could go for refund of the balance amount and the said amount was pocketed by the conductor.

6. In a matter of departmental inquiry and award of punishment, limits of the jurisdiction of a court are too narrow. A court cannot interfere in the discretion exercised by the disciplinary authority. A court ordinarily would not interfere into the quantum of punishment, unless it is held that the punishment awarded to the delinquent was shockingly disproportionate.

7. In the present case, in the opinion of this Court, the court below was, however, obliged to remand the matter back to the disciplinary authority for imposing appropriate penalty or to award appropriate penalty. Instead of doing

so, if the court has exercised its discretion in favour of the workman, then, it would not be possible for this Court to interfere in the matter. In a petition under Article 227 of the Constitution of India, High Court would be entitled to interfere in the matter, if subordinate court / tribunal has exercised the jurisdiction not vested in it or has refused to exercise the jurisdiction vested in it. At one point of time maintaining the findings that the termination was wrong, I wanted to remand the matter back to the disciplinary authority, but Mr.Dastoor, learned counsel submitted that instead of remitting the matter to the disciplinary authority, the matter may be decided by this Court only.

8. Taking into consideration the totality of the circumstances, I do not think that present is a case where High Court is required to interfere.

9. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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